

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1543 OF 2002

Kiran Sahebrao Patil,
Age 46 years, Occ. Conductor,
R/o Bichkheda, Post Ghadwel,
Tq. Chopda, Dist. Jalgaon. ..Petitioner

Versus

The Divisional Controller
MSRTC, Jalgaon Division,
Jalgaon. ..Respondent

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Advocate for Petitioner : Shri B.R.Warma
Advocate for Respondent : Shri M.K.Goyanka
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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 22, 2017
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ORAL JUDGMENT: -

1. The petitioner is aggrieved by the judgment of the Industrial Court dated 2.3.2002, by which, Revision (ULP) No.667 of 1999 (Old No. 429 of 1998), filed by the MSRT Corporation has been allowed and the judgment of the Labour Court dated 22.1.1998, allowing Complaint (ULP) No.206 of 1993, has been set aside.

2. I have considered the strenuous submissions of Shri Warma, learned Advocate who has drawn my attention to the seven grounds formulated by him in the memo of the petition and the submissions

of Shri Goyanka, learned Advocate for the respondent / Corporation.

With their assistance, I have gone through the record available.

3. From the judgment of the Labour Court dated 22.1.1998, I find that the concerned Judge at the relevant time has been passing peculiar orders which can be summarised as follows:-

- (a) Domestic enquiry is fair and proper.
- (b) Findings of the Enquiry Officer are partly perverse.
- (c) Mis-conduct of the complainant is partly proved.
- (d) Complaint (ULP) is partly allowed.
- (e) Complainant deserves to be reinstated in service without backwages.

4. There is no dispute that in this case, the petitioner / Bus Conductor was charged with having committed mis-appropriation. His past service record is blemished. Notwithstanding the law laid down by the Honourable Apex Court in the matters of Workmen of the Motipur Sugar Factory Private Ltd., Vs. The Motipur Sugar Factory Private Ltd., [AIR 1965 SCC 1803], Delhi Cloth and General Mills Company Limited Vs. Ludh Budh Singh - [1972 (1) SCC 595 = AIR 1972 SC 1031], Workmen of Firestone Rubber and Tyre Company Vs. the Management and others [(1973) 1 SCC 813], Bharat Forge Company Ltd., Vs. A.B. Zodge and another [AIR 1996

SC 1556] and State Bank of Patiala and others Vs. S.K.Sharma [AIR 1996 SC 1669], the Labour Court has delivered a common judgment by vitiating the enquiry and by depriving the Corporation the opportunity to conduct a *de novo* enquiry.

5. This procedure followed by the Labour Court is against the law standing for the last about 60 years. In this backdrop, the judgment of the Labour Court has to be set aside and the matter deserves to be remitted back to the Labour Court for following the due procedure in conducting such cases as is summarised by this Court in the matters of Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & another Vs. Vasant Ambadas Deshpande [2014 (3) Mh.L.J. 339 : 2014 I CLR 878] and Maharashtra State Roadways Transport Corporation Vs. Syed Saheblal Syed Nijam [2014 III CLR 547 = 2014 (4) Mah.L.J.687].

6. However, the learned counsel for the petitioner submits that during the pendency of the proceedings before the Industrial Court and this Court, he was continued in service and by the interim relief granted by this Court in terms of prayer clause (c), he performed his duties till he superannuated on 31.5.2014. Learned counsel for the respondent / Corporation submits that after the retirement of the petitioner, he was paid his retiral benefits, including provident fund

accumulations, except the gratuity amount. He submits that if the charges are proved before the Labour Court after remand, the petitioner would not be entitled for gratuity.

7. Learned counsel for the petitioner makes a statement, on instructions, that the petitioner is willing to give up the gratuity amount and this petition be disposed off without remanding the matter to the Labour Court. Learned counsel for the respondent / Corporation is agreeable keeping in view that all retiral benefits, except gratuity have been paid to the petitioner.

8. Considering the above, this petition is disposed off without causing interference in the judgment of the Industrial Court, by which, the judgment of the Labour Court has been quashed and set aside. Since the petitioner has given up his claim for gratuity and as remaining retiral benefits are already paid to the petitioner, there shall be no recovery by the respondent from the petitioner.

9. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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